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The Grapes of Wrath

California Raisins are Back at the Supreme Court

By Trevor Burrus

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When Marvin Horne told the United States Raisin Administrative Committee (yes, there's a raisin administrative committee) that he wasn't going to turn over nearly 30 percent of his crop to the government in exchange for nothing, he probably didn't expect his case would go to the Supreme Court—twice. That little act of civil disobedience was thirteen years ago, and the Hornes now stand on the precipice of vindicating an important constitutional right—the Fifth Amendment right not to have your property taken without just compensation—as well as putting a wrench in the gears of what Justice Elena Kagan called "the world's most outdated law."

Like much of our agricultural policy, the Raisin Administrative Committee (RAC) is a relic of New Deal-era cartelization schemes. Trying to understand the logic behind American agricultural policy is like trying to find the logic in a Marx Brothers movie—it can't be done and you're better off just sitting back and laughing at the antics. Yet our agricultural policy has real-world effects on farmers like the Hornes, who are subject to the whims of the RAC as it tries to stabilize the price and supply of raisins. Sometimes the RAC pays for the raisins it takes, and sometimes not. In 2002-2003, the RAC offered far less than the cost of production for 47 percent of the Hornes' raisins, and in 2003-2004 they offered nothing for 30 percent of the raisins. The Hornes had had enough, and they refused the order, arguing the seemingly simple point that the confiscation would be a taking without just compensation under the Fifth Amendment.

On their first trip to the Court (in which Cato filed a brief), the Hornes had to establish that they could bring their takings claim in federal district court without first paying the fines (now about $650,000). A unanimous Court held that the Hornes could bring their claim and then remanded the case to the U.S. Court of Appeals for the Ninth Circuit to determine if a taking occurred. In a frankly stunning opinion, the Ninth Circuit held that the Takings Clause affords more protection to real property (land) than it does to personal property. The Ninth Circuit also held that, because there is a possibility that the government might decide to pay money for the raisins it takes, the Hornes had not been fully deprived of their property.

Cato, joined by the National Federation of Independent Business, the National Association of Home Builders, the Reason Foundation, and the Southeastern Legal Foundation, argues that the Ninth Circuit's reasoning ignores the text of the Takings Clause, which makes no distinction

between real and personal property ("nor shall private property be taken for public use without just compensation"), and ignores Supreme Court precedent. We also argue that the Ninth Circuit's argument that the mere possibility of future compensation can nullify a takings claim sets an extremely dangerous precedent. After all, as Judge Alex Kozinski wrote in dissent to the Ninth Circuit's opinion, "if the city wants to display your Renoir in its museum, it can't just take it and compensate you with the joy of viewing it during visiting hours." Yet, for raisin farmers in California, the deal is even worse. If the Ninth Circuit is right, the government can take your Renoir, send it back to France, and, after pocketing the change to cover its own budget, give you absolutely nothing. It's time for the "world's most outdated law" to shrivel up and go the way of the California Raisins.

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